Chieng Soh Geok & Ors v Chieng Sing Huat

HIGH COURT (SIBU) — SUIT NO 22-110 OF 1998
TEE AH SING J
17 SEPTEMBER 1999

Succession *— Letters of administration — No application taken out — Duty of administrator to distribute residue of estate — Application for declaration that plaintiffs and defendant were entitled to equal shares under estate — Whether premature — Power of probate officer to decide on grant of letters of administration — Whether jurisdiction of High Court to issue letters of administration or probate — Administration of Estates Ordinance (Sarawak Cap 80)*

The plaintiffs and the defendant were the surviving children, heirs and beneficiaries of the estate of Chew Geok King (deceased) who passed away intestate on 31 May 1992. The plaintiffs had proposed that the estate be distributed in accordance to the law, ie equal shares to all surviving children. The plaintiffs alleged that the defendant unreasonably and wrongfully wanted the estate's half undivided share in a shophouse to be transferred to him as the sole beneficiary of the estate to the exclusion of the plaintiffs. The plaintiffs sought for a declaration that the plaintiffs and the defendant were and are the rightful issues, heirs and beneficiaries of the estate of the deceased and are entitled to take in equal shares under the estate of the deceased. The defendant made an application to struck out the plaintiffs' action on the ground that: (i) it disclosed no reasonable cause of action; (ii) it was an abuse of the process of court; and (iii) the plaintiffs' action was premature as no attempt had been made to apply to the probate officer and that the Administration of Estates Ordinance (Sarawak Cap 80) ('the Ordinance') does not confer any jurisdiction to the High Court to issue any grant of letters of administration or probate as only the probate officer has the power to decide to whom to grant the letters of administration.

Held, striking out the plaintiff's action:

(1) Neither the plaintiffs nor the defendant had made any application to the probate officer for grant of letters of administration in respect of the estate of the deceased. Thus, no administrator had been granted letters of administration by the probate officer. According to s 17(c) of the Ordinance, it is the duty of the administrator to distribute the residue of the estate among the beneficiaries or heirs of the deceased. When distributing the estate of the deceased, the administrator has to take into consideration the Distribution Act 1958 which is an Act relating to the law of distribution of intestate estates. In the present case, the plaintiffs' allegation against the defendant was of no consequence since only the administrator can make the decision as to the person entitled to the same and such administrator had not been appointed (see pp 534G, 535A–E).

(2) It is not proper for this court to usurp the power of the administrator by granting the declaration sought by the plaintiffs because it is the duty of the administrator to decide the person or persons entitled to the share of the estate and in what proportions. After the administrator has made his decision, then if any of the issues, heirs or beneficiaries are dissatisfied with the decision of the administrator, they can bring an action against the administrator. As no administrator had been appointed, this action by the plaintiffs was premature. The statement of claim disclosed no reasonable cause of action (see p 535G–I).

[**Bahasa Malaysia summary**

Plaintif-plaintif dan defendan merupakan anak-anak, waris-waris dan benefisiari yang masih hidup kepada harta pusaka Chew Geok King (si mati) yang telah meninggal dunia tak berwasiat pada 31 Mei 1992. Plaintif-plaintif telah mencadangkan bahawa harta pusaka itu dibahagikan menurut undang-undang, ie pembahagian sama rata antara semua anak-anak yang masih hidup. Plaintif-plaintif mendakwa bahawa defendan telah secara tidak munasabah dan salah mengingini separuh daripada bahagian harta pusaka yang tidak dibahagikan lagi itu yang di dalam bentuk sebuah rumah kedai untuk dipindahkan kepada beliau sebagai benefisiari tunggal kepada harta pusaka itu sehingga mengenepikan plaintif-plaintif. Plaintif-plaintif memohon untuk suatu deklarasi bahawa plaintif-plaintif dan defendan adalah dan merupakan zuriat-zuriat, waris-waris dan benefisiari-benefisiari kepada harta pusaka si mati dan berhak untuk mengambil bahagian yang sama rata di bawah harta pusaka si mati itu. Defendan telah membuat suatu permohonan untuk membatalkan tindakan plaintif-plaintif atas alasan bahawa: (i) ia tidak mendedahkan sebarang sebab munasabah kausa tindakan; (ii) ia merupakan satu penyalahgunaan proses mahkamah; dan (iii) tindakan plaintif-plaintif adalah pramasa kerana tiada usaha telah dibuat untuk memohon kepada pegawai probet dan bahawa Ordinan Pentadbiran Harta Pesaka (Sarawak Cap 80) ('Ordinan itu') tidak memberikan apa-apa bidang kuasa kepada Mahkamah Tinggi untuk mengeluarkan apa-apa kebenaran surat kuasa mentadbir atau probet kerana hanya pegawai probet sahaja mempunyai kuasa untuk memutuskan kepada siapa surat kuasa mentadbir itu diberikan.

Diputuskan, membatalkan tindakan plaintif:

(1) Kedua-dua plaintif-plaintif maupun defendan tidak membuat apa-apa permohonan kepada pegawai probet untuk kebenaran surat kuasa mentadbir berhubung dengan harta pusaka si mati. Oleh itu, tiada pentadbir yang telah memberikan surat kuasa mentadbir oleh pegawai probet. Menurut s 17(c) Ordinan itu, adalah tugas pentadbir untuk membahagikan baki harta pusaka

itu antara benefisiari-benefisiari atau waris-waris si mati. Semasa membahagikan harta pusaka si mati, pentadbir perlu mengambil kira Akta Pembahagian 1958 yang merupakan satu Akta berhubung dengan undang-undang pembahagian harta pusaka tak berwasiat. Di dalam kes ini, dakwaan plaintif-plaintif terhadap defendan bukanlah akibatnya kerana hanya pentadbir boleh membuat keputusan kepada siapa yang berhak kepada yang sama dan pentadbir itu tidak dilantik lagi (lihat ms 534G, 535A–E).

(2) Adalah tidak betul bagi mahkamah ini untuk merampas kuasa pentadbir dengan memberikan deklarasi yang dipohon oleh plaintif-plaintif kerana adalah tugas pentadbir untuk memutuskan orang atau orang-orang yang berhak kepada bahagian harta pusaka itu dan sebanyak mana. Selepas pentadbir membuat keputusan, jika mana-mana daripada zuriat-zuriat, waris-waris atau benefisiari-benefisiari berasa tidak puas hati dengan keputusan pentadbir, mereka boleh memulakan satu tindakan terhadap pentadbir itu. Oleh kerana tiada pentadbir telah dilantik, tindakan oleh plaintif-plaintif ini adalah pramasa. Pernyataan tuntutan tidak mendedahkan sebarang kuasa tindakan yang munasabah (lihat ms 535G–I).]

Notes

For cases on letters of administration generally, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1902–1963.

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd [1993] 3 MLJ 36 (refd)

Caxton (Kelang) Sdn Bhd v Susan Joan Labrooy & Anor [1988] 2 MLJ 604 (refd)

Goh Joon v Kerajaan Negeri Johor & Ors [1999] 5 CLJ 335 (refd)

Honan Plantations Sdn Bhd v Kerajaan Negeri Johor & Ors [1998] 2 MLJ 498 (refd)

Lim Siok Luan v Theresa Chin Kim Thye [1999] 1 AMR 133 (refd)

Ong Ka Kim v Wong Sing Kiong & Ors [1997] 5 MLJ 46 (refd)

Raja Zainal Abidin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 MLJ 16 (refd)

Sum Phoon Mun v Mann Foong Realty Sdn Bhd & Anor [1998] 3 CLJ 919 (refd)

Legislation referred to

Administration of Estates Ordinance 1948 (Sarawak Cap 80) ss 17, 29

Distribution Act 1958

Rules of the High Court 1980 O 15 r 16, O 18 r 19(1)(a)

Specific Relief Act 1950 s 41

Stephen Chung (Stephen Robert & Wong) for the plaintiffs.
Wong Sing Nang (Wong Orlando Chua & Co) for the defendant.

Cur Adv Vult

Tee Ah Sing J: On 9 September 1998, Chieng Soh Geok ('the first plaintiff'), Chieng Soh Eng ('the second plaintiff'), Chieng Soh Hua ('the third plaintiff'), Chieng Soh Choo ('the fourth plaintiff'), Chieng Soh Hee ('the fifth plaintiff'), Chieng Soh Hie ('the sixth plaintiff'), Chieng Suk Mui ('the seventh plaintiff') and Chieng Sing Ming ('the eighth plaintiff') (collectively referred to as 'the plaintiffs') filed a civil suit against Chieng Sing Huat ('the defendant').

The relevant parts of the statement of claim reads as follows:

(1) At all material times the plaintiffs are and were the surviving eldest son and daughters, heirs and beneficiaries of the estate of Chew Geok King (deceased) (hereinafter referred to as the 'deceased') who passed away intestate on 31 May 1992.

(2) The defendant is and was at all material times the surviving younger son, heir and beneficiary of the estate of the deceased and the brother of the plaintiffs.

(3) At the time of death of the deceased, the plaintiffs and defendant had attained the age of majority and entitled to take under the estate.

(4) At all material times the deceased owned the following properties ('the estate').

Particulars

(A) One-half (1/2) undivided right title share and interest in that parcel of land together with a four (4) storey shophouse thereon known as No 72, Jalan Kampong Nyabor and appurtenances thereof and described as Lot 167 Block 5 Sibu Town District.

(B) Savings Account in several Bank as follows:

	A/C No	*Banks*	*Amount*
(i)	No 218237606	The Chartered Bank	RM 140.45
(ii)	No 22-082-12019-0	Hock Hua Finance Corporation Bhd (formerly known as Hock Thai Finance Corporation Bhd)	RM 39,863.30
(iii)	No 019-50-09580-3	Hong Leong Bank Berhad	RM 8,767.43

(C) Fixed deposit in several Finance or Institutions as follows:

	A/C No	*Finance Institutions*	*Amount*
(i)	No 04-0904-010541-8	MBf Finance Bhd (placement No 16-0904-031752-5)	RM19,177.89 as from 26.6.1998

(ii)	002539/9	Delta Finance Bhd (Receipt No 271171)	RM9,003.87 as from 18.2.1998
(iii)	002539/9	Delta Finance Bhd (Receipt No 271172)	RM16,166.89 as from 3.3.1998
(iv)	002539/9	Delta Finance Bhd (Receipt No 297143)	RM17,332.91 as from 27.6.1998
(v)	002539/9	Delta Finance Bhd (Receipt No 297142)	RM19,239.37 as from 10.7.1998
(vi)	F/005/002861/1	Chew Geok Lin Finance Bhd (Cert No 980031)	RM 9,527.24 as from 30.3.1998
(vii)	F/005/002861/1	Chew Geok Lin Finance Bhd (Cert No 980032)	RM24,102.60 as from 4.1.1998

(5) Pursuant to the provisions of the Distribution Act (Revised) both the plaintiffs and defendant are entitled to equal shares under the estate.

(6) However, the defendant unreasonably and wrongfully wanted the estate's half undivided share in the shophouse to be transferred to him as the sole beneficiary of the estate to the exclusion of the plaintiffs who are also the rightful beneficiaries under the estate entitled to share in the shophouse.

(7) The plaintiffs say that it is for this reason that the plaintiffs and the defendant as the beneficiaries of the estate could not agree and to this date formal applications for the letters of administration of the estate has not been applied for.

(8) Further, the plaintiffs say that the defendant since the death of the deceased has been wrongfully collecting the estate's shares of the rental from the shophouse for his own use and has refused to give an account and/or pay to the plaintiffs their rightful shares.

Particulars

...

(9) The plaintiffs say that by the conduct and actions of the defendant, the plaintiffs have suffered losses and damages and the defendant had deprived the plaintiffs' rights as lawful co-beneficiaries of the said estate.

(10) The plaintiffs therefore claims against the defendant as follows:

(a) A declaration that the plaintiffs and defendant were and are the rightful issues, heirs and beneficiaries of the estate of the deceased and are entitled to take in equal shares under the estate of the deceased.

(b) A declaration that the plaintiffs and defendant as the rightful issues, heirs and beneficiaries of the estate of the deceased shall be entitled to take and be distributed the property under the estate of the deceased in equal shares.

(c) An order for the equal distributions of the deceased estate among the plaintiffs and defendant and that the senior assistant registrar shall be authorized to sign and execute the letters of administration, the

transmission, memorandum of transfer and all relevant documents relating thereto.

(d) An account be taken of the rentals received by the defendant under the estate.

(e) An order for the payment by the defendant to the plaintiffs in equal shares of rentals from the estate upon the taking of such accounts.

(f) Such further and other relief as this honourable court may deem fit and proper to grant.

By a summons in chambers dated 7 May 1999 the defendant prayed for the writ of summons and statement of claim of the plaintiffs be struck out on the grounds that:

(a) it discloses no reasonable cause of action;

(b) it is an abuse of the process of the court; and

(c) the plaintiffs' action is premature as no attempt has been made to apply to the probate officer, Sibu and that the Administration of Estates Ordinance, Sarawak amended in 1965 (Cap 80) does not confer any jurisdiction to the High Court to issue any grant of letters of administration or probate as only the probate officer has the power to decide to whom the grant of letters of administration.

The application is supported by the affidavit of the defendant affirmed on 4 May 1999.

An affidavit of opposition was affirmed by the second plaintiff on 25 May 1999 on behalf of the plaintiffs.

An affidavit in reply was affirmed by the defendant on 7 June 1999.

The learned counsel for the defendant submitted that the application is based on the grounds that: (a) there is no reasonable cause of action; and (b) that it is an abuse of the process of court. The plaintiffs' action is premature as no attempt has been made to apply to the probate officer for the letters of administration. Under the Sarawak Administration of Estates Ordinance (Cap 80) it does not confer any jurisdiction to the High Court to issue any grant of letters of administration or probate. The probate officer is the only person who has power to decide to whom the letters of administration is to be granted. In support the cases of *Ong Ka Kim v Wong Sing Kiong & Ors* [1997] 5 MLJ 46 and *Lim Siok Luan v Theresa Chin Kim Thye* [1999] 1 AMR 133 were cited.

The learned counsel for the plaintiffs in his written submission contended, inter alia, as follows:

(1) The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) Rules of the High Court 1980 ('the RHC') are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule. This summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable. See *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd* [1993] 3 MLJ 36.

(2) In an application under O 18 r 19(1)(a) of the RHC, the pleadings and particulars alone shall be considered and all the allegations in it shall be presumed to be true, and it is only in that assumption that any suitable case can be made for this application. The court cannot and indeed is not empowered to look behind the pleadings and particulars if it discloses a reasonable cause of action. So long as the statement of claim discloses some ground of action the mere fact that the plaintiffs are not likely to succeed on it at trial is no ground for it to be struck out. See *Honan Plantations Sdn Bhd v Kerajaan Negeri Johor & Ors* [1998] 2 MLJ 498.

(3) When an application is also made under the other limbs of O 18 r 19(1) RHC, the court should embark on a minute examination of the affidavits and documents. See *Raja Zainal Abidin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16 and *Sum Phoon Mun v Mann Foong Realty Sdn Bhd & Anor* [1998] 3 CLJ 919.

(4) Exhibits 'CSE-l', 'CSE-2' and 'CSE-3' showed that back in 1994 and 1995 the plaintiffs had proposed that the estate be distributed in accordance to the law ie equal shares to all the surviving children. However, the defendant refused. Exhibit 'CSE-4' dated 4 December 1997 clearly showed that the defendant wanted the estate half share in the shophouse to be transferred to him as the sole beneficiary of the estate to the exclusion of the other rightful beneficiaries.

(5) The exhibits clearly show that the defendant had been and continues to be unreasonable and not agreeable to the proposals of the plaintiffs ie that all the children take equal shares under the estate. This is the position under the Distribution Act 1958. However, the defendant disagreed and refused to an equal share. The defendant wants a greater share.

(6) Therefore in order to break the dead lock and for the proper and equitable administration and distribution of the estate, the plaintiffs have no choice but to come to this honourable court for their rights and interests to be protected. A dispute and/or controversy has clearly existed between the parties which involve the rights and interests of the parties to and under the estate. This court has the power, jurisdictions and discretion to determine the issues between the parties.

(7) It is clear that the plaintiffs have and the statement of claim discloses a reasonable cause of action which is clearly sustainable and maintainable in this court. Therefore, this is not a plain and obvious case to strike out the plaintiffs' action. On the contrary, the plaintiffs have a good case on the merits.

(8) The plaintiffs are not asking this honourable court to issue any grant of letters of administration to the plaintiffs under the Administration of Estates Ordinance (Cap 80). The Administration of Estates Ordinance mainly deals with the application for and grant of probate or letters of administration, ie who shall become the executor or

A administrator. Section 17 of the Administration of Estates Ordinance deals with the distribution of the estate.

(9) In this case, the plaintiffs are concerned about the equitable distribution of the estate in accordance to recognized law, ie the Distribution Act 1958.

B (10) The parties, in particular the plaintiffs, could not apply to the probate officer at the Sibu District Office under the Administration of Estates Ordinance because the parties could not agree to the proper and equitable administration and distribution of the estate. Assuming that the plaintiffs and defendant could apply to and be granted the letters of administration, the parties would still have to come to this court to C determine their rights to distribution under the estate.

(11) The plaintiffs in paras 10(a) and (b) of the statement of claim have therefore asked for a declaration that the plaintiffs and the defendant were and are the rightful issues, heirs and beneficiaries of the estate of the deceased and are entitled to take in equal shares under the estate D and that the plaintiffs and defendant shall be entitled to take and be distributed the property under the estate in equal shares.

(12) A declaratory relief is discretionary in nature and the court is always expected to exercise its judgment as to the reasonability and necessity of granting such a relief. The court may refuse to entertain declaratory proceedings when there is no dispute at all, or where the matter is E highly hypothetical or where it involves future rights. See *Goh Joon v Kerajaan Negeri Johor & Ors* [1999] 5 CLJ 335. In this case, there is clearly a dispute and controversy between the plaintiffs and the defendant, the matter is not hypothetical but involves an existing and proprietary rights and interests of the parties.

F (13) Siti Norma Yaakob J (as she then was) in *Caxton (Kelang) Sdn Bhd v Susan Joan Labrooy & Anor* [1988] 2 MLJ 604 said that a declaratory judgment does not involve a cause of action in the usual sense and that six factors must be present before there can be a declaratory order. These are:

G (a) There must exist a controversy between the parties.

(b) The proceedings must involve a 'right'.

(c) The proceedings must be brought by a person who has a proper or tangible interest in obtaining the order, which is usually referred to as 'standing' or 'locus standi'.

H (d) The controversy must be subject to the court's jurisdiction.

(e) The defendant must be a person having a proper or tangible interest in opposing the plaintiff's claims.

(f) The issue must be ripe, ie it must not be of academic interest, hypothetical or one whose resolution would be of no practical I utility.

It is humbly submitted that all six conditions are met by the facts of this case and there is no merits to the defendant's contention that the plaintiffs' claims cannot be maintained.

(14) Section 41 of the Specific Relief Act 1950 allows the plaintiffs to seek declarations as to his legal character or status or right to property, which is the case here.

(15) Order 15 r 16 of the RHC provides that the plaintiffs only need to establish that their legal interests have been affected. The plaintiffs do not even have to show any cause of action. In this case the plaintiffs have a standing to come to this court because their rights are at stake.

(16) Apart from the declaratory orders, the plaintiffs are also applying for an account to be taken of the rentals received by the defendant under the estate and for the defendant to pay to the plaintiffs their rightful shares to the rental after the taking of such accounts. These are set out in paras 10(d) and (e) of the statement of claim. This is a reasonable cause of action in itself and should not be struck out.

(17) Therefore the plaintiffs claims are not premature. Their rights and interests under the estate have been affected and prejudiced by the actions of the defendant. They are entitled under the law to come to this Honourable Court for relief.

I shall deal with the matter before me.

The provisions of the Administration of Estates Ordinance (Cap 80) do not confer any jurisdiction on the High Court to issue any grant of probate or letters of administration. The person clothed with power to do so is now only the probate Officer (see *Ong Ka Kim v Wong Sing Kiong & Ors* [1997] 5 MLJ 46 and *Lim Siok Luan v Theresa Chin Kim Thye* [1999] 1 AMR 133).

In *Lim Siok Luan v Theresa Chin Kim Thye*, his Lordship Ian Chin J at p 138 succinctly said:

> The probate Officer is clothed with power under the Ordinance to decide to whom the grant of probate or letters of administration should be issued to but the exercise of this power can be challenged in a court of law by way of judicial review (*Foo Sam Tek v probate Officer, Simanggang* [1960-63] SCR 17) or even by way of a writ action seeking a declaration regarding the correctness of the decision (*Teh Guan Teik v Inspector-General of Police & Anor* [1998] 3 MLJ 137 (FC).

In our case neither the plaintiffs nor the defendant had made any application to the probate Officer Sibu for the grant of letters of administration in respect of the estate of the deceased. Thus, no administrator has been granted letters of administration by the Probate Officer Sibu.

Section 17 of the Administration of Estates Ordinance reads as follows:

> 17 On obtaining probate or letters of administration the executor or administrator, as the case may be, shall forthwith —
>
> (a) collect and recover all the property, assets and effects covered by the grant;
>
> (b) discharge thereout all the debts due by the deceased which are legally recoverable; and
>
> (c) distribute the residue of the estate among the beneficiaries or heirs of the deceased, according to the will of the deceased or, as the case

A may be, in the shares to which they are entitled by recognized law or custom.

Under s 17(c) of the Administration of Estates Ordinance it is the duty of the administrator to distribute the residue of the estate among the beneficiaries or heirs of the deceased, according to the will of the deceased or, as the case may be, in the shares to which they are entitled by recognised law or custom. So when distributing the estate of the deceased the administrator has to take into consideration the Distribution Act 1958 which is an Act relating to the law of distribution of intestate estates.

In *Lim Siok Luan v Theresa Chin Kim Thye* [1999] 1 AMR 133, his Lordship Ian Chin J at p 139 said:

> As for the entitlement to a share in the estate, a claim must be put forth and rejected before any action can be commenced based on the rejection. In this regard the alleged conversation denying the rights of the plaintiff and her children to a share in the estate is of no consequence since only the administrator can make such a decision and such administrator had not yet been appointed.

I am in full agreement with his Lordship.

In our case the averment in para 6 of the statement of claim that 'However, the defendant unreasonably and wrongfully wanted the estate's half undivided share in the shophouse to be transferred to him as the sole beneficiary of the estate to the exclusion of the plaintiffs who are also the rightful beneficiaries under the estate entitled to share in the shophouse' is of no consequence since only the administrator can make the decision as to the person or persons entitled to the same and such administrator had not been appointed.

Section 29 of the Administration of Estates Ordinance reads as follows:

> An executor or administrator may refer to the court for settlement any question arising in the course of winding up the estate, and the costs thereof shall be borne by the estate, unless the court otherwise directs.

Under the aforesaid section the administrator may refer the dispute averred in para 6 of the statement of claim to the court.

It is not proper for this court to usurp the power of the administrator by granting a declaration that the plaintiffs and defendant were and are the rightful issues heirs and beneficiaries of the estate of the deceased and are entitled to take in equal shares under the estate of the deceased because it is provided under s 17 of the Administration of Estates Ordinance that it is the duty of the administrator to decide the person or persons entitled to the share of the estate and in what proportions.

After the administrator has made his decision as to the person or persons entitled to the share of the estate and in what proportions, then if any of the issues, heirs or beneficiaries are dissatisfied with the decision of the administrator they can bring an action against the administrator.

As no administrator has been appointed, I am of the view that this action by the plaintiffs is premature. I am of the view that the statement of claim discloses no reasonable cause of action.

In view of the foregoing, I order that the writ of summons and statement of claim be struck off with costs to the defendant to be taxed unless agreed.

Plaintiff's action struck off.

Reported by Jafisah Jaafar